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Mr Karceski - it is OK to bring the additional  
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Dale M. Shaw

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Paper No. 45

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte BRUNO GIROUARD & BERTHOLD FECTEAU

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Appeal No. 2004-0921  
Application No. 09/ 472,134

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DECISION ON MOTION FOR INTRODUCTION OF  
DEMONSTRATIVE EVIDENCE AT ORAL HEARING

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On May 28, 2004, appellants filed a paper entitled "Motion for Introduction of Demonstrative Evidence" (Paper No. 44). In this paper, appellants request that they be permitted to present a demonstration involving two snowmobiles, one constructed according to the instant application on appeal, and one constructed according to the prior art, as demonstrative evidence relevant to the rejections on appeal. The motion is **DENIED.**

**BACKGROUND**

The instant application was filed on December 23, 1999. After a long and complicated prosecution, appellants filed a combined Notice of Appeal and a Request for Oral Hearing on November 25, 2002. (Paper No. 27). After further prosecution,

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appellants filed their Appeal Brief on May 27, 2003 (Paper No. 35). On September 10, 2003, the Examiner mailed an Examiner's Answer (Paper No. 38). In addition, based on comments in appellants' Motion, it appears that on September 10, 2003, a personal interview was held in a related application, U. S. Application No. 09/877,188, and that the examiner of the instant application attended. On October 22, 2003, the appellants filed their Reply Brief (Paper No. 39). The Examiner acknowledged the Reply Brief January 9, 2004 (Paper No. 40). On March 5, 2004, the Board of Patent Appeals and Interferences (Board) mailed a Docketing Notice to Appellants (Paper No. 41). On March 19, 2004, the Board mailed a Notice of Oral Hearing, setting the Hearing date as June 10, 2004 at 1:00 P.M. (Paper No. 42). On March 24, 2004, appellants confirmed that they would be attending the Oral Hearing (Paper No. 43). On May 28, 2004, appellants filed their Motion for Introduction of Demonstrative Evidence (Motion) (Paper No. 44). In this Motion, appellants set forth a number of Oral communications between the Board and Appellants' counsel, Mr. John Darling, Reg. No. 44482. A history of the oral communications is set forth below.

Subsequent to the Confirmation of the Oral Hearing and before the teleconference on March 31, 2004, Mr. Dale M. Shaw, a Program and Resource Administrator for the Board, spoke with Mr. John Darling. In that first teleconference, Mr. Darling asked if two full sized snowmobiles could be brought into the Hearing Room. Mr. Shaw denied this request, and informed Mr. Darling that there was not

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adequate space in the Board's hearing room for such a demonstration. Mr. Shaw went on to say that he did not think that appellants could fit the snowmobiles into the elevators, or through the Board's hearing room's doors. On March 31, Mr. Darling held a teleconference with Mr. Craig Feinberg, another Program and Resource Administrator. In that conference, Mr. Darling asked if the two snowmobiles were to be placed on a flat bed truck, and parked outside to Board's building, whether the Merits Panel handling the Oral Hearing could come down to the truck and view the snowmobiles. Mr. Feinberg, upon realizing that Mr. Shaw had handled the prior request, forwarded the request to Mr. Shaw. On April 7, 2004, Mr. Shaw again denied the request, due to safety, traffic, security, and other logistical concerns. Mr. Shaw then indicated that if appellants wished to seek reconsideration of the oral denial, they must do so in writing.

## **DISCUSSION**

It is first noted that there is no indication on the record that an interview for the instant application was held on September 10, 2003. Indeed, it is quite clear from the record, that the personal interview was for the parent case U.S. Application No. 09/877,188, not the application presently on appeal. There is no indication, that the examiner considered the interview as particularly pertinent to the instant application. Moreover, even if it were considered pertinent to the instant application, it is clear from the record, that the demonstration held on September 10, 2003 occurred after the filing

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of the Notice of Appeal on November 25, 2002. Since the demonstration occurred after the filing of Notice of Appeal, 37 CFR § 1.195 applies. The text of 37 CFR § 1.195 is provided below:

Affidavits, declarations, or exhibits submitted after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented.

There is nothing in the instant record that shows that appellants have complied with the requirement of 37 CFR § 1.195. The instant record states that an interview was held in the parent application. There are no details of how the demonstration pertains to the claims of the instant application on appeal. On the contrary, the record is quite clear that the demonstration was for parent case U.S. Application No. 09/877,188, not for the instant application. Now appellants urge that the demonstration also applies to the instant appeal and seek leave to present such demonstration to the Merits Panel assigned to the present appeal. However, appellants have failed to show any good and sufficient reasons as to why the demonstration was not earlier presented. For this reason the motion must be denied.

In addition, the issues set forth by Program and Resource Administrator Shaw, in his oral denial of April 7, 2004, still apply. There is no parking in front of the Board's building for appellants to park a flat bed truck holding the two snowmobiles. Thus, the

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only way to park in front of the Board's building is to park illegally. This raises numerous traffic, safety and logistical considerations which cannot be resolved by the Board. Accordingly, the motion must be denied.

Since appellants have not complied with the requirements of 37 CFR § 1.195, and appellants' proposed demonstration would raise a number of significant safety and logistical problems, appellants' motion is **DENIED**

**MOTION DENIED.**

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